

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
Section 272(f)(1) Sunset of the BOC Separate	)	WC Docket No. 02-112
Affiliate and Related Requirements	)	
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**Comments of the  
Washington Utilities and Transportation Commission**

The Washington Utilities and Transportation Commission (Washington UTC) offers these comments in response to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking (NPRM) released May 24, 2002, in the above docket. In the NPRM, the Commission requested comments on the sunset of statutory requirements under section 272 of the Telecommunications Act of 1996.

For the reasons discussed below, the Washington UTC believes it would be premature to allow the provisions of section 272 to expire three years after a BOC or BOC affiliate is authorized under section 271 to provide in-region interLATA services, as section 272(f)(1) currently requires.

If the telecommunications industry were today as vibrant and healthy as Congress had envisioned in 1996, the statutory three-year period for maintaining the safeguards would probably be sufficient. In such an environment three years would be long enough for competitors to erase the vestiges of monopoly power. However, competition is not developing as quickly as Congress had hoped. For example, in Washington State the regional Bell operating company first applied for authority to offer interLATA services more than six years after enactment of section 271, even though the provisions of section 271(e) suggest that Congress expected Bell entry within three years.

The framework for competitive entry is in place, as evidenced by the Washington UTC's decision last month endorsing Qwest's interLATA application. It took longer to reach this point than was expected, and there is every reason to believe that in today's financial climate and given the situations faced by many competitive LECs, it will take much longer than the three years envisioned by Congress for robust, sustainable competition to develop. Lifting the safeguards too soon could result in keeping potential competitors out of Washington markets altogether and hindering those competing in Washington markets currently. Washington consumers would be harmed by having fewer choices of telecommunications providers.

There are only two states in which biennial audits have been performed.<sup>1</sup> None have been performed in Qwest states. In both biennial audits, the auditors found exceptions to compliance of various section 272 requirements. The existence of these exceptions results in additional time and effort needed by the FCC, state commissions, and independent accountants to evaluate them and ensure, if need be, that they are corrected by the RBOCs and not repeated in the future. In such cases, the results of the second biennial audit would be crucial to regulators. This need alone would support extending the three-year sunset on the section 272 safeguards. Under the current rule, the three-year sunset period would occur prior to the second biennial audit results being available.

The Commission seeks comment on whether to allow the separate affiliate to sunset after three years, but retain the nondiscrimination safeguards and/or biennial audit.<sup>2</sup> The nondiscrimination safeguards the FCC developed to implement the Act reflect the need for bottleneck facilities and services to be available at like prices and terms to RBOC and CLEC alike. This can be achieved through nondiscrimination safeguards regardless of whether structural separation is maintained. As long as the nondiscrimination safeguards must be maintained, the audit function will need to continue to ensure that they remain

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<sup>1</sup> SBC Communications Inc., Report of Independent Accountants on Applying Agreed-Upon Procedures, December 17, 2001; Verizon Communications Inc., Report of Independent Accountants on Applying Agreed-Upon Procedures, June 11, 2001.

<sup>2</sup> NPRM at ¶24.

effective and discrimination is not taking place. That being said, the Washington UTC observes that maintaining a separate affiliate makes the audit process easier and provides more transparency to the transactions to be audited.

Regardless of the approach the FCC decides to take regarding the sunset date, the RBOCs are not filing for, and receiving, 271 approval in all states they serve simultaneously. As a practical matter, it makes little sense for the statutory requirements to expire in some states as long as they are still in effect in others. If the FCC decides to maintain a three-year sunset for the statutory requirements, it should be effective no sooner than three years after 271 approval is received for the last pending 271 application. Any extension to the sunset period should be applied consistent with this recommendation.

For the reasons stated above, the Washington Utilities and Transportation Commission encourages the Commission to retain the provisions of section 272 beyond the three-year statutory period because they provide necessary consumer and competitive protections that cannot otherwise be obtained.